

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Various Exemptions from the Tax (LAC 61:I.4401)

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4401 relative to the sales tax exemption set forth in Article VII, Section 2.2 of the Constitution of Louisiana and R.S. 47:305(D) regarding food for home consumption.

This proposed Rule provides guidance as to which food items are taxable and which are exempt under the Constitutional and Statutory provisions.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 44. Sales and Use Tax Exemptions

#### §4401. Various Exemptions from the Tax

##### A. - F. ...

1. R.S. 47:305(D) provides an exemption from state sales tax upon the sale at retail of food sold for preparation and consumption in the home as well as for some other expressed types of food sales. For this purpose, meat, fish, milk, butter, eggs, bread, vegetables, fruit and their juices, canned goods, oleo, coffee and its substitutes, soft drinks, tea, cocoa and products of these items, bakery products, candy, condiments, relishes and spreads, are all considered food items. Items such as flour, sugar, salt, spices, shortening, flavoring and oil that are generally purchased for use as ingredients in other food items constitute food. Items considered to be food are not limited to the examples set forth above. The listing is not all inclusive.

2. Alcoholic beverages, malt beverages and beer; tobacco products; distilled water, water in bottles, carbonated water, ice and "dry ice" are not considered to be food. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts are also not considered to be food.

*Dietary Supplements*—any product, other than tobacco, intended to supplement the diet that:

i. contains one or more of the following dietary ingredients:

- (a).a vitamin;
- (b).a mineral;

(c).an herb or other botanical;

(d).an amino acid;

(e).a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f). a concentrate, metabolite, constituent, extract, or combination of any ingredients described in i-v above; and

ii. is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

iii. is required to be labeled as a dietary supplement, which is identifiable by the fact that the product contains a "Supplemental Facts" box on the label.

3. "Food for home consumption" as used in R.S. 47:305(D)(1)(n) does not include "prepared food."

#### *Prepared Food*—

i. food sold in a heated state or heated by the seller;

ii. two or more food ingredients mixed or combined by the seller for sale as a single item, which does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and food containing these raw animal foods requiring cooking by the consumer in order to prevent food borne illnesses; or

iii. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

4. Notwithstanding language to the contrary in Paragraph F.3, bakery products, dairy products, soft drinks, fresh fruits and vegetables, and package foods requiring further preparation by the purchaser are considered "food for home consumption" unless sold by an establishment listed in R.S. 47:305(D)(3). However, soft drinks that are sold with a cup, glass or straw are not considered "food for home consumption."

5. Sales of meals furnished to the staff and students of educational institutions including kindergartens; the staff and patients of hospitals; the staff, inmates and patients of mental institutions; boarders of rooming houses; and occasional meals furnished in connection with or by educational, religious or medical organizations are exempt from the taxes imposed by this Chapter, provided the meals are consumed on the premises where purchased. Sales of food by any of these institutions or organizations in facilities open to outsiders

or to the general public are not exempt from the taxes imposed by this Chapter, and tax should be charged on the entire gross receipts, rather than just the receipts from the outsiders or the general public.

6. Facilities for the consumption of food on the premises as discussed in R.S. 47:305(D)(3) include not only inside facilities, but also outside facilities, including parking facilities.

7. Purchases of food items by stores, institutions and organizations can be purchased without payment of the advance sales tax provided the ultimate retail sale or consumption of the food is exempt from taxes imposed by this Chapter. Regardless of the type of purchaser, if a majority of the food purchased and disposed is taxable under the established rules, advance sales tax must be paid by the purchaser.

G. - J. ...

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 29:

#### **Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative Oversight Committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule will have no

effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, Post Office Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, June 23, 2003. A public hearing will be held on Thursday, June 26, 2003, at 10:00 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney  
Senior Policy Consultant

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Various Exemptions from the Tax**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation of this proposed Rule will have no impact on state or local governmental units' cost. This proposal is being adopted to provide guidance on the exemption from state sales tax of food purchased for consumption in the home, which is provided under Article VII, Section 2.2 of the Constitution of Louisiana and R.S. 47:305(D)(1)(n-r).

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation. The revenue impact to the state is unknown but would be minimal.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed regulation should provide an economic benefit to businesses that sell food for consumption in the home because it establishes a standard for identifying items that are exempt from sales and use tax under Article VII, Section 2.2 of the Constitution of Louisiana and R.S. 47:305(D)(1)(n-r). However, vendors may incur a one-time expense for reprogramming their systems to comply with these changes.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation should increase the fairness of economic competition between vendors because it creates a standard for the exemption that is easily administered. Employment should not be affected.

Cynthia Bridges  
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